

ALJ/KJB/jt2

## PROPOSED DECISION

Agenda ID #12909 [\(Rev. 1\)](#)

Ratesetting

[5/15/2014 Item #7](#)

Decision PROPOSED DECISION OF ALJ BEMESDERFER (Mailed 4/10/14)

### BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Chevron Pipe Line Company (PLC13) for Authorization to Increase Its Rates and Charges for Crude Oil Transportation and Gathering Services on Its California Pipelines Effective January 1, 2013.

Application 12-11-027  
(Filed November 30, 2012)

**DECISION DENYING MOTION OF CHEVRON ~~PIPELINE~~PIPE LINE COMPANY FOR LEAVE TO WITHDRAW APPLICATION; DENYING MOTIONS OF TESORO MARKETING AND SUPPLY COMPANY TO REINSTITUTE PROCEEDING SCHEDULE, FOR A DISCOVERY ORDER, AND TO RETURN CONSIDERATION OF TARIFF ISSUES TO THIS PROCEEDING; GRANTING APPLICATION AS AMENDED BY THIS PROCEEDING; AND ORDERING CHEVRON ~~PIPELINE~~PIPE LINE COMPANY TO REDUCE RATES AND REFUND CHARGES**

#### 1. Background

In this application, Chevron ~~Pipeline~~Pipe Line Company (CPL) sought approval to increase its rates and charges for transportation and gathering of crude oil on its California pipeline system by 10% effective January 1, 2013.

Pursuant to Pub. Util. Code § 455.3,<sup>1</sup> oil pipeline corporations like CPL may increase pipeline transportation rates upon thirty days' notice to the Commission and prior to Commission approval, provided that the proposed increase does not exceed 10% per 12-month period. (All statutory references hereafter are to the Public Utilities Code.) Section 455.3 further provides the Commission with authority to suspend any such rate increase and use of the increased rate for a period of time not to exceed 30 days from expiration of the 30-day notice of increase provided by the oil pipeline corporation. Finally, § 455.3 allows the Commission to subsequently evaluate the reasonableness of any rate increase affected prior to Commission approval, to disallow any portion of the rate increase that is ultimately deemed unreasonable, and to require refund of that

<sup>1</sup> 455.3(a) Notwithstanding any other provision of law, including, but not limited to Section 454, no later than January 1, 1998 the commission shall adopt rules and regulations that substantially revise the manner in which oil pipeline corporation may change and use rates.<sup>⊥</sup>

(b) The revised rules and regulations shall adhere to the following criteria:<sup>⊥</sup>

(1) Pipeline corporations shall be required to give the commission and all shippers no less than 30 days' notice of rate changes.<sup>⊥</sup>

(2) After the 30-day notice of rate change, pipeline corporations shall be permitted to change rates and use those rates prior to commission approval.<sup>⊥</sup>

(3) The commission shall have the authority to suspend a rate change and use of the changed rate for a period of time not to exceed 30 days from the expiration of the 30-day notice period specified in paragraph (1).<sup>⊥</sup>

(4) Pipeline corporations shall refund, with interest, any portion of the rate change that is subsequently disallowed by the commission to all shippers within 30 days of the commission's decision becoming final. Interest shall accrue from the date the new rate is first charged.<sup>⊥</sup>

(5) Any increase in the shipping rate charged by an oil pipeline corporation prior to commission approval shall not exceed 10% per 12-month period. The commission shall determine the appropriateness of allowing retroactive charge and collection of subsequently approved rate increases above 10%.<sup>⊥</sup>

(c) It is the intent of the Legislature that oil pipeline corporations be permitted to use new rates after the period of the suspension of a rate change, if any, by the commission pursuant to paragraph (3) of subdivision (b) prior to commission approval, provided any disallowed portion of the new rate is fully refunded with interest.<sup>⊥</sup>

portion of the increase found to be unreasonable. The application includes drafts of proposed Tariffs 50 and 51 to replace existing Tariffs 48 and 49 if the application is granted and the new rates are approved.

The application was protested by Tesoro Refining and Marketing Company (Tesoro) and responded to by Valero Marketing and Supply Company (Valero) pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure.<sup>2</sup> Both Tesoro and Valero are shippers on the CPL pipelines. Neither the Tesoro Protest nor the Valero Response objected to any element of CPL's cost of service showing, which supported a rate increase of up to 61% based on the data included in the application.

Contemporaneously with the application, CPL filed Advice Letter (AL) 49 proposing extensive changes to its crude oil transportation tariff in response to a contamination incident that shut down the pipeline for most of the 4th quarter of 2012. The proposed tariff changes address safety issues identified as a result of the contamination incident, responsibility for the cost of future contamination

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<sup>2</sup> Rule 2.6:<sup>1</sup>

(a) Unless otherwise provided by rule, decision or General Order, a protest or response must be filed within 30 days of the date the notice of the filing of the application first appears in the Daily Calendar.<sup>1</sup>

(b) A protest objecting to the granting, in whole or in part, of the authority sought in an application must state the facts or law constituting, the grounds for the protest, the effect of the application on the protestant, and the reasons the protestant believes the application, or a part of it, is not justified. If the protest requests an evidentiary hearing, the protest must state the facts the protestant would present at an evidentiary hearing to support its request for whole or partial denial of the application.<sup>1</sup>

(c) Any person may file a response that does not object to the authority sought in an application, but nevertheless present information that the person tendering the response believes would be useful to the Commission in acting on the application.<sup>1</sup>

(d) Any person protesting or responding to an application shall state in the protest or response any comments or objections regarding the applicant's statement on the proposed category, need for hearing, issues to be considered, and proposed schedule.<sup>1</sup>

incidents, and changes in the method of pipeline operation designed to minimize the risk of similar incidents in the future. On March 25, 2013 Tesoro filed a protest of AL 49.

Also on March 25, 2013, the assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC). Prior to the PHC, Tesoro filed a statement of issues proposed for inclusion in the proceeding (PHC Statement). At the PHC, Tesoro argued that it would be inappropriate to set rates for the pipeline in this proceeding without consideration of the tariff changes proposed by CPL in AL 49 and that evidentiary hearings (EHs) were necessary to determine issues of material fact raised in the PHC Statement and orally at the PHC. CPL argued that the matters were severable and that this proceeding should confine itself to determining if it had made an adequate showing to support the 10% increase permitted by Section 455.3. Following the PHC, on May 24, 2013 the ALJ issued a proposed decision (PD) granting the requested increase and denying Tesoro's request to include consideration of the proposed tariff changes in this proceeding. In its comments on the PD, Tesoro argued that it had erred in concluding that there were no material issues of fact raised by the Tesoro Protest based on the arguments and comments made in the PHC Statement and orally at the PHC. After considering the comments, the ALJ withdrew the PD on the grounds that it erred in limiting Tesoro to the text of the filed Protest without reference to either the Tesoro PHC Statement or the oral arguments presented at the PHC. Accordingly, the ALJ concluded, contrary to the PD, that EHs would be necessary and that a Scoping Memo should be issued.

On August 5, 2013, the assigned Commissioner issued a scoping ruling which he amended on August 29, 2013, in response to a motion filed by CPL. The amended scoping ruling removed tariff issues from this proceeding. For the

next several months, the parties met and conferred in an effort to reach a voluntary settlement. At the request of the parties, the procedural schedule was suspended and this proceeding was held in abeyance during that period. Those efforts were not fruitful and on January 29, 2014, Tesoro filed a series of motions calling for the resumption of the proceeding, a discovery order, and reinsertion of the tariff issues into the scope of this proceeding. On February 10, 2014, CPL moved for leave to withdraw the application and additional necessary authority to refund to shippers with interest the rate increase put in place in February 2013.<sup>3</sup> Tesoro filed a response to the motion to withdraw on February 25, 2014.

## **2. Discussion**

Although this case has an unusual procedural posture as a result of CPL's decision to seek authority to withdraw its application, the underlying issues are relatively straightforward. CPL raised rates by 10% on its California pipelines on February 1, 2013 pursuant to the provisions of § 455.3. Tesoro protested the increase and challenged CPL's claimed cost of service justification for the increase. CPL put forward via advice letter certain proposed tariff changes dealing with the handling of future contamination incidents. Over Tesoro's objections, the assigned Commissioner removed consideration of the tariff issues from the scope of this proceeding. The net effect of these actions is to leave the question of rates for determination here and the question of tariff changes for determination via the advice letter proceeding in the Energy Division. We believe this is the appropriate division of responsibility and we will not alter it.

<sup>3</sup> Specifically, CPL requested the additional necessary authority to file two separate Tier 1 advice letters that would return all parties to the rate level status quo existing as of January 31, 2013. In these advice letters, CPL would submit new tariffs for the California Pipelines that would set rates at the rate levels in formerly effective CAL P.U.C. Tariffs 48 and 49; and correspondingly propose a refund plan to return to customers, with interest, the incremental amount CPL collected for services provided between February 1, 2013 and April 30, 2014 in accordance with Tariffs 50 and 51.

CPL argues that we have authority under Pub. Util. Code § 311(b) to grant its motion to withdraw the application; however, we do not believe it is necessary to decide that issue. Rather, we choose to treat the motion to withdraw the application and restore the previously effective tariffs as a de facto amendment to the application to change the relief requested. By approving the application as amended, we effectively moot Tesoro's objections to the extent that they pertain to issues within the scope of the proceeding.

Although Tesoro has argued in its response to CPL's motion to withdraw the application that it will suffer substantive harm if that motion is granted<sup>4</sup> or, what amounts to the same thing, if it is characterized as an amendment to the application and we approve the application, we disagree. CPL has succinctly stated the reasons why returning the parties to the status quo ante is an appropriate resolution of this proceeding:

- 1) Although submitted in November 2012, the proceeding remains in its very preliminary stages – the procedural schedule has been suspended, no testimony has been submitted, no briefs filed, and the proposed decision previously issued has been withdrawn.
- 2) Granting the amended application will prejudice no party and will benefit CPL's shippers through a reduction in future rates and a refund for past periods.
- 3) With the tariff issues having been removed, this rate proceeding has possible consequences only for CPL and its shippers and raises no broader policy issue.<sup>5</sup>

To these reasons advanced by CPL, we may add a fourth. Granting the amended application does away with the need to examine CPL's cost justification

<sup>4</sup> Tesoro Response to Chevron Motion to Withdraw Application (February 25, 2014) at 2-3.

<sup>5</sup> See Chevron Motion to Withdraw Application And For Authority To File Tier 1 Advice Letters To Reduce Rates And Refund Certain Revenues (February 10, 2014) at 2.

for its increased rates at the present time since the decision rescinds the rate increase that CPL put in place on February 1, 2013. When CPL files its next application for a cost-of-service increase, shippers will have ample opportunity to conduct discovery and challenge the cost of service showing.

### **3. Comments on Proposed Decision**

The proposed decision of ALJ Bemesderfer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on April 30, 2014, by CPL and Tesoro, and reply comments were filed on by May 5, 2014, by CPL.

### **4. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Karl J. Bemesderfer is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Pursuant to the authorization granted by Pub. Util. Code § 455.3, Chevron ~~Pipeline~~Pipe Line Company increased its crude oil transportation rates by 10% subject to refund on February 1, 2013.

2. Chevron ~~Pipeline~~Pipe Line Company's application for approval of its February 1, 2013 rate increase was protested by Tesoro Refining and Marketing Company pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure.

3. Chevron ~~Pipeline~~Pipe Line Company's motion to withdraw its application for approval of the February 1, 2013 rate increase is a de facto amendment to the application to change the relief requested.



4. There is no procedural schedule in effect at the present time, no testimony has been submitted, no briefs filed, and the proposed decision previously issued has been withdrawn.

5. Granting the amended application will prejudice no party and will benefit ~~CPL~~[Chevron Pipe Line](#)'s shippers through a reduction in future rates and a refund for past periods.

6. There are no material issues of fact in dispute.

### **Conclusions of Law**

1. Chevron ~~Pipeline~~[Pipe Line](#) Company's motion to withdraw its application should be denied.

2. Chevron ~~Pipeline~~[Pipe Line](#) Company's amended application to reduce current rates on its California pipelines to their January 31, 2013 level should be approved.

3. Chevron ~~Pipeline~~[Pipe Line](#) Company should return to shippers increased charges since February 1, 2013 plus interest.

4. Returning rates to their January 31, 2013 level and refunding to shippers the increased charges since February 1, 2013 plus interest moots the Tesoro objections to the extent that they pertain to issues within the scope of the proceeding.

## **O R D E R**

### **IT IS ORDERED** that:

1. Chevron ~~Pipeline~~[Pipe Line](#) Company's motion to withdraw its application is denied.



2. Tesoro Refining and Marketing Company's motions to resume the procedural schedule, for a discovery order, and to restore consideration of tariff changes to this proceeding are denied.

3. Chevron ~~Pipeline~~Pipe Line Company's application as amended by this proceeding is approved.

4. Within 30 days of the effective date of this decision, Chevron ~~Pipeline~~Pipe Line Company shall submit new tariffs for its California pipeline system that would set rates at the rate levels in formerly effective CAL P.U.C. Tariffs 48 and 49; and return to customers, with interest, the incremental amount it collected for services provided between February 1, 2013 and the effective date of this decision in accordance with Tariffs 50 and 51. Such refunds to customers shall be made within 60 days of the effective date of this decision.

5. Application 12-11-027 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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